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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,778	06/07/2001	Jan L. Clatty	Mo6418/MD-01-49-PU	8857

7590 05/04/2004

Patent Department  
Bayer Corporation  
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Pittsburgh, PA 15205-9741

EXAMINER

COONEY, JOHN M

ART UNIT PAPER NUMBER

1711

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Paper No. 0404

Application Number: 09/876,778  
Filing Date: June 07, 2001  
Appellant(s): CLATTY, JAN L.

\_\_\_\_\_  
Lyndanne M. Whalen  
For Appellant

EXAMINER'S ANSWER

**MAILED**  
MAY 04 2004  
GROUP 1700

This is in response to the appeal brief filed 2-12-04.

Art Unit: 1711

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

**(5) Summary of Invention**

The summary of invention contained in the brief is correct.

**(6) Issues**

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

The rejection of claims 1-7 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

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**(9) Prior Art of Record**

6,180,686

KURTH

1-2001

**(10) Grounds of Rejection**

Rejection of the claims under 35 USC 102(b) over WO 00/23491 is withdrawn in light of factual demonstration that the reference lacks an isocyanate-reactive component based on the natural oils as claimed.

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurth (6,180,686).

Kurth discloses isocyanate-reactive compositions comprising blown soy oil, crosslinking agent, blowing agent, and catalysts in amounts encompassing of appellant's claims (see the entire document).

Kurth differs from appellant's claims in that it is directed to the avoidance of environmentally questionable and relatively expensive petrochemical based polyols. However, its disclosure is replete with recognition of the well known nature of the

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polyols being avoided including specifics of molecular weight and functionality preferences for the various conventional polyols which they discuss to be well studied (see column 1 line 67 – column 2 line 29) which well encompass the molecular weight and functionality values claimed by appellant. Accordingly, it would have been obvious for one having ordinary skill in the art to have utilized petrochemical based polyether based polyols disclosed/avoided by Kurth in accompaniment with blown soy oil for the purpose of imparting relative non-degradability to the products being produced therefrom in order to arrive at the products of appellant's claims with the expectation of success in the absence of a showing of new or unexpected results. All disclosures of the prior art, including unpreferred or auxiliary embodiments, must be considered in determining obviousness. *In re Mills*, 176 USPQ; *In re Lamberti*, 192 USPQ 278', *In re Boe*, 148 USPQ 507.

**(11) *Response to Argument***

Appellant's arguments have been considered but rejection is maintained as the reference's disclosure taken in its completeness is seen to fairly suggest appellant's claimed invention as characterized by examiner. No additional reference is seen to be necessary to support examiner's position of obviousness because the reference is specific as to the materials being avoided. If one were not interested in obtaining the full ecological advantages associated with their preferred isocyanate reactive component, then they would have been *prima facie* motivated to use the recited other well-known conventional petrochemical isocyanate-reactive materials identified by Kurth for their property engineering effects described.

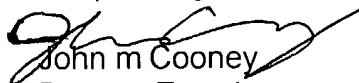
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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



John M Cooney  
Primary Examiner  
Art Unit 1711


JMC

April 28, 2004

Conferees



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